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Cultivation Ban of MON 810 Confirmed by Court

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Report Highlights:

Higher Administrative Court Supports German Cultivation Ban for MON 810 Corn

On May 28, 2009, also the Higher Administrative Court in Luenenburg, Germany, decided to reject Monsanto's appeal to lift the cultivation ban for MON 810 corn varieties. Germany is now the sixth EU member state banning cultivation of MON 810 corn. Already in June 1999, Austria banned import and cultivation of MON 810 corn. In the following years Hungary, Greece, France and Luxembourg followed the Austrian example and banned MON 810 corn with reference to the EU safeguard clause.

General Information:

Higher Administrative Court Supports German Cultivation Ban for MON 810 Corn

On May 28, 2009, also the Higher Administrative Court in Lueneburg, Germany, decided to reject Monsanto's appeal to lift the cultivation ban for MON 810 corn varieties. Germany is now the sixth EU member state banning cultivation of MON 810 corn. Already in June 1999, Austria banned import and cultivation of MON 810 corn. In the following years Hungary, Greece, France and Luxembourg followed the Austrian example and banned MON 810 corn with reference to the EU safeguard clause.

On April 14, 2009, the Federal Minister for Food, Agriculture and Consumer Protection (BMELV) Ilse Aigner instructed the Federal Office for Consumer Protection and Food Safety (BVL) to order Monsanto to no longer market and cultivate MON 810 corn varieties. The banning order is of temporary nature until the European Commission finally assesses the legality of the EU approval for MON 810 cultivation within the EU.

The Lueneburg court took a very legal technical approach to reject the Monsanto appeal:

- The safeguard clause laid down in the German genotech law, section 20.2 only requires a prognosis of an abstract danger for human health or the environment. The prognosis has to be based on new information and scientific findings. A final evaluation of these studies is not required.
- Since the ban is only of temporary nature, the requirements for the prognosis are rather low. Clearly defined and scientifically supported dangers are not required. The national courts are not authorized to anticipate the final decision on the European authorities which have the competence to assess the validity of the national bans.
- The discretion of the national government may also include political aspects. It is irrelevant that the technical experts of BVL did not support the ban in the beforehand.
- In view of the exemplary precedents in other EU member states banning MON 810 cultivation there is no reason for a deeper assessment of the studies the decision is based on. Furthermore, these decisions indicate that the German decision is not arbitrary.
- Finally, the economic interests of farmers interested in planting MON 810 varieties hold lesser weight than environment protection aspects.

Comment: The outlook that the national cultivation bans for MON 810 corn will be lifted on the European level is rather bleak. The political will to support biotech crop cultivation on German fields is under current political conditions extremely limited. There is currently basically only one political party, the Free Democrats Party, a non-governing party, represented in the German Bundestag offensively supporting biotech crop cultivation. However, there are several individual politicians of other political parties publically expressing their support for biotechnology.

The main concern for German politicians is that German companies and researchers loose interest in biotechnology research and leave the country or give up biotech projects. Politicians still proudly claim that German researchers are among the group of leading researchers in plant biotechnology. On the other side these same politicians easily give in to populist demands to keep Germany free of

biotech crop cultivation.

Groups of leading German scientists and agriculture industry representatives have published several memoranda during recent months demanding freedom of research and political support for science based decisions. Since these are only the voices of a few hundred experts they have been overshadowed by the loud populist demands for a biotech-free Germany.